

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 30, 2003, Work Session**

AGENDA ITEM NO.: 5

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Possible Use of the Public-Private Transportation Act on the Crosstown Connector**

RECOMMENDATION: Authorize staff to pursue utilization of the Public-Private Transportation Act to facilitate construction of the Crosstown Connector.

SUMMARY: For several months the idea of using the Public-Private Transportation Act (PPTA) on the Crosstown connector project has been examined. Discussions have been held with representatives of local contracting and engineering firms, the Commissioner of VDOT, and City staff. The PPTA, a copy of which is attached, provides for an alternate mechanism to construct and maintain road projects and it has been or is being used in several locations across the state. The premise behind the PPTA is that a public-private partnership can do several things for an important road project: it can provide a source of funding when state or local resources are lacking, it can construct the project on an accelerated timetable, and, it can bring the project in at less cost. For a project like the Crosstown Connector, earlier completion could also bring economic development benefits in the area around the Plaza and Lynchburg General Hospital.

Due to the strong business community interest in having the Crosstown Connector project completed as soon as possible, considering the PPTA seems prudent. Presently, the projection is that Phase II of the project will not start construction until as late as 2009, with completion in 2011. Furthermore, full funding of Phase II has not yet been identified. Phase I, on the other hand, is fully funded, with design nearly complete (there are several issues still to be resolved, however), and is scheduled to go into right of way acquisition in the near future. Project completion would probably be in the 2006 to 2007 timeframe. If both phases could be built as one project, there could be economies of scale resulting in a lower cost and completion two to three years sooner.

In order to utilize the PPTA, the City would need to take responsibility for the project and to make a number of important decisions. An agreement with VDOT for City administration of the project would have to be negotiated. The City would then be responsible for completing project design, acquiring right of way (including by eminent domain if necessary), and project management. While some of this could be done by the private entity partner, the City would have ultimate responsibility for project completion. The City would also have to prepare guidelines for the solicitation of proposals or the receipt of unsolicited proposals and will have to decide what level of competitiveness it would want in the process. City staff may need assistance in this effort from outside consultants.

If Council agrees that this approach should be pursued, staff will look deeper into it including meeting with VDOT to discuss an agreement for City project administration and drafting guidelines for receiving proposals.

PRIOR ACTION(S): None

FISCAL IMPACT: Undetermined

CONTACT(S): Kimball Payne

ATTACHMENT(S): Public-Private Procurement Act of 1995

REVIEWED BY: lkp

Code of Virginia

§ 56-556. Title.

This chapter may be cited as the **"Public-Private Transportation Act of 1995."**
(1994, c. 855; 1995, c. 647.)

§ 56-557. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located.

"Asset management" means a systematic process of operating and maintaining the state system of highways by combining engineering practices and analyses with sound business practices and economic theory to achieve cost-effective outcomes.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § 56-566 of this chapter.

"Maintenance" means that term as defined in § 33.1-23.02.

"Material default" means any default by the operator in the performance of its duties under subsection F of § 56-565 of this chapter that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the operator and a reasonable cure period has elapsed.

"Operator" means the private entity that is responsible for the acquisition, construction, improvement, maintenance and/or operation of a qualifying transportation facility.

"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of any of the foregoing, but shall not include any public service company.

"Qualifying transportation facility" means one or more transportation facilities acquired, constructed, improved, maintained and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity that has the power to acquire, construct, improve, maintain and/or operate the applicable transportation facility.

"Revenues" means the user fees and/or service payments generated by a qualifying transportation facility.

"Service contract" means a contract entered into between a public entity and the operator pursuant to § 56-561 of this chapter.

"Service payments" means payments to the operator of a qualifying transportation facility pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any other property that is needed to operate the transportation facility.

"User fees" mean the rates, fees or other charges imposed by the operator of a qualifying transportation facility for use of all or a portion of such qualifying transportation facility pursuant to the comprehensive agreement.

(1994, c. 855; 1995, c. 647; 2001, c. 286; 2002, cc. 570, 593.)

§ 56-558. Policy.

A. The General Assembly finds that:

1. There is a public need for timely acquisition or construction of and improvements to transportation facilities within the Commonwealth that are compatible with state and local transportation plans;
2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and
3. Authorizing private entities to acquire, construct, improve, maintain, and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § 56-560 of this chapter, shall serve the public purpose of this chapter if such action facilitates the timely acquisition or construction of or improvement to a qualifying transportation facility or the continued operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to facilitate to the greatest extent possible, the pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991, and any successor legislation, to the end that transportation financing be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

(1994, c. 855; 1995, c. 647.)

§ 56-559. Prerequisite for operation.

Any private entity seeking authorization under this chapter to acquire, construct, improve, maintain and/or operate a transportation facility shall first obtain approval of the responsible public entity under § 56-560. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-560 or the responsible public entity may request proposals pursuant to subsection B of § 56-560.

(1994, c. 855; 1995, c. 647.)

§ 56-560. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity with respect to the transportation facility or facilities that the private entity proposes to operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;

3. The projected total life-cycle cost of the transportation facility or facilities and the proposed date for acquisition of or the beginning of construction of, or improvements to the transportation facility or facilities;
 4. A statement setting forth the method by which the operator proposes to secure all property interests required for the transportation facility or facilities. The statement shall include: (i) the names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities, (ii) the nature of the property interests to be acquired, and (iii) any property that the responsible public entity is expected to be requested to condemn;
 5. Information relating to the current transportation plans, if any, of each affected local jurisdiction;
 6. A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
 7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the operator to accommodate such crossings;
 8. A statement setting forth the operator's general plans for financing and operating the transportation facility or facilities;
 9. The names and addresses of the persons who may be contacted for further information concerning the request; and
 10. Such additional material and information as the responsible public entity may reasonably request.
- B. The responsible public entity may request proposals from private entities for the acquisition, construction, improvement and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.
- C. The responsible public entity may grant approval of the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:
1. There is a public need for the transportation facility or facilities of the type the private entity proposes to operate as a qualifying transportation facility;
 2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the operator's plans for operation of the qualifying transportation facility or facilities, are reasonable and compatible with the state transportation plan and with the local comprehensive plan or plans;
 3. The estimated cost of the transportation facility or facilities is reasonable in relation to similar facilities; and
 4. The private entity's plans will result in the timely acquisition or construction of or improvements to the transportation facility or facilities or their more efficient operation.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request submitted by a private entity pursuant to subsection A, including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement with the responsible public entity.

F. In connection with its approval of the operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

(1994, c. 855; 1995, c. 647; 2003, c. 289.)

§ 56-561. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with an operator for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

(1994, c. 855; 1995, c. 647.)

§ 56-562. .

Repealed by Acts 1995, c. 647.

§ 56-563. Affected local jurisdictions.

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-560 shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying transportation facility shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying transportation facility to the responsible public entity and indicating whether the facility is compatible with the local comprehensive plan.

(1994, c. 855; 1995, c. 647.)

§ 56-564. Dedication of public property.

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law, to the operator, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the operator to operate the qualifying transportation facility.

(1994, c. 855; 1995, c. 647.)

§ 56-565. Powers and duties of the operator.

A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to acquire,

construct, improve or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. No tolls or user fees may be imposed by the operator on any free road, bridge, tunnel or overpass unless such road, interstate highway, bridge, tunnel or overpass is reconstructed to provide for increased capacity.

B. The operator may own, lease or acquire any other right to use or operate the qualifying transportation facility.

C. Any financing of the qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

D. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

E. In operating the qualifying transportation facility, the operator may:

1. Make classifications according to reasonable categories for assessment of user fees; and
2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to a similar transportation facility.

F. The operator shall:

1. Acquire, construct, improve, maintain and/or operate the qualifying transportation facility in a manner that meets the engineering standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the comprehensive agreement;
2. Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees, except when exempted by § 33.1-252, and/or service payments; provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;
3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;
4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and
5. Comply with the provisions of the comprehensive agreement and any service contract.

(1994, c. 855; 1995, c. 647; 2002, c. 593.)

§ 56-566. Comprehensive agreement.

A. Prior to acquiring, constructing, improving, maintaining, and/or operating the qualifying transportation facility, the operator shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;
 2. Review of plans and specifications for the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standard conditions of the responsible public entity;
 3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the engineering standards acceptable to the responsible public entity;
 4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;
 5. Monitoring of the maintenance practices of the operator by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained;
 6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;
 7. Filing of appropriate financial statements on a periodic basis;
 8. A reasonable maximum rate of return on investment for the operator; and
 9. The date of termination of the operator's authority and duties under this chapter and dedication to the appropriate public entity.
- B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the operator the rate of return on investment specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the operator to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.
- C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal government or any agency or instrumentality thereof.
- D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying transportation

facility. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Commonwealth's transportation trust fund, to the responsible public entity, or to the operator for debt reduction or they may be shared with affected local jurisdictions.

F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

(1994, c. 855; 1995, c. 647.)

§ 56-567. Federal, state and local assistance.

The responsible public entity may take any action to obtain federal, state or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any agency or instrumentality thereof.

(1994, c. 855; 1995, c. 647.)

§ 56-568. Material default; remedies.

A. Except upon agreement of the operator and any other parties identified in the comprehensive agreement, no responsible public entity shall exercise any of the remedies provided in this section or in subsection B or C of § 56-569 unless the Commission, after notice to the operator and the secured parties (as may appear in the operator's records) and an opportunity for hearing, shall first issue a declaratory judgment that a material default, as defined in § 56-557, has occurred and is continuing.

B. Upon entry by the Commission of a declaratory judgment order pursuant to subsection A above, unless such order is stayed pending appeal to the Virginia Supreme Court, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over the transportation facility or facilities and in such case it shall succeed to all of the right, title and interest in such transportation facility or facilities, subject to any liens on revenues previously granted by the operator to any person providing financing therefor and the provisions of subsection C below.

2. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of

condemnation by any responsible public entity against a qualifying transportation facility after the entry by the Commission of a final declaratory judgment order pursuant to subsection A above. Any person that has provided financing for the qualifying transportation facility, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

3. The responsible public entity may terminate the comprehensive agreement and exercise any other rights and remedies which may be available to it at law or in equity.

4. The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by subsection A 1 of § 56-566.

C. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection B 1 of this section, the responsible public entity shall acquire, construct, improve, operate and maintain the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves and such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility.

Remaining revenues, if any, after all payments for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the operator, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues.

(1994, c. 855; 1995, c. 647.)

§ 56-569. Condemnation.

A. At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

B. Except as provided in subsection A of this section, until the Commission has entered a final declaratory judgment order under subsection A of § 56-568, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the entry of such final order by the Commission, any responsible public entity having the power of condemnation under law may exercise such power of condemnation as provided in subsection B 2 of § 56-568 in lieu of, or at any time after taking over the transportation facility pursuant to subsection B 1 of § 56-568.

(1994, c. 855; 1995, c. 647.)

§ 56-570. Utility crossings.

The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the operator.

(1994, c. 855; 1995, c. 647.)

§ 56-571. Police powers; violations of law.

A. All police officers of the Commonwealth and of each affected local jurisdiction, shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such local jurisdiction. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such local jurisdiction.

(1994, c. 855; 1995, c. 647.)

§ 56-572. Dedication of assets.

The responsible public entity shall terminate the operator's authority and duties under this chapter on the date set forth in the comprehensive agreement. Upon termination, the authority and duties of the operator under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

(1994, c. 855; 1995, c. 647.)

§ 56-573. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including but not limited to interconnection of the qualifying transportation facility with any other transportation facility. Counties, cities and towns in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

(1994, c. 855; 1995, c. 647.)

§ 56-573.1. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.
2. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. A responsible public entity shall proceed in accordance with the procedures adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the procedures adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or urgency of a project or (ii) risk sharing, added value, an increase in funding, or economic benefit from the project that would not otherwise be available. When the responsible public entity determines to proceed according to the procedures adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation shall be required before the comprehensive agreement is signed.
3. Comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an agreement shall be procured in accordance with procedures that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.
4. The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56.

5. Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make available, upon request, procurement records in accordance with § 2.2-4342.

6. Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

(1995, c. 647; 2002, cc. 570, 593; 2003, c. 968.)

§ 56-573.2. Jurisdiction.

The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter.

(1995, c. 647.)

§ 56-574. Preservation of the Virginia Highway Corporation Act of 1988.

Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway Corporation Act of 1988, as amended (§ 56-535 et seq.). Nothing in the Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the authority of this chapter.

(1994, c. 855; 1995, c. 647.)
